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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT GLEN MOURITSEN,

Defendant.

**MOTION TO EXCLUDE
WITNESS AT SENTENCING**

Case No. 1:18-cr-00075 TC

The defendant, Robert Glen Mouritsen, by and through his counsel, moves to exclude Gary Fowler as a victim because he fails to meet the requirements under 18 U.S.C. § 3771(e) (The Victim's Rights Act. "VRA") and United States Sentencing Guideline 2B1.1, Application Note 3(A)(iii). Gary Fowler is not a victim and his statement should not be considered by the court nor should he be allowed to testify at Mr. Mouritsen's sentencing hearing.

In order to be identified as a victim under the victims' rights act 18 U.S.C. § 3771 (e) a person must be "directly and proximately harmed as a result of the commission of an offense **for which restitution may be ordered . . .**",(Emphasis added.) Under the VRA, a victim must suffer pecuniary harm of some sort. § 2B1.1 also requires "pecuniary harm" if the guideline is to be considered at all. Application Note 3(A)(iii) defines *pecuniary harm* as "monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does **not** include emotional distress, harm to reputation or other noneconomic harm." (Emphasis added).

Mr. Fowler was repaid in full. Mr. Fowler is not on the restitution list. Mr. Fowler's loss does not fit the meaning of the VRA or § 2B1.1 and should not be allowed.

The defense would respectfully request that Mr. Fowler's letter not be included as an attachment to the pre-sentence report and that Mr. Fowler not be allowed to speak at the sentencing hearing.

DATED this 31st day of August, 2020.

/s/ Robert K. Hunt
ROBERT K. HUNT
Assistant Federal Public Defender